Supreme Court, U.S.
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No. 90-1629

In the Supreme Court of the United States

OCTOBER TERM, 1991

UNITED STATES OF AMERICA, PETITIONER

v.

NORDIC VILLAGE, INC., RICHARD A. BAUMGART, TRUSTEE

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JOINT APPENDIX

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PETITION FOR WRIT OF CERTIORARI FILED APRIL 23, 1991
CERTIORARI GRANTED JUNE 17, 1991

In the Supreme Court of the United States

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[1] The opinion of the court of appeals, the order of the court of appeals denying rehearing, the judgment of the court of appeals, the orders and judgments of the district court, and the orders and judgments of the bankruptcy court are printed in the appendix to the petition for a writ of certiorari and have not been reproduced here.

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Case No. B84-771

IN RE: NORDIC VILLAGE, INC.,
dba SWISS HAUS, DEBTOR

Adv. No. B84-694

DAVID O. SIMON, TRUSTEE, PLAINTIFF

v.

JOHN HOWARD, ET AL., DEFENDANTS

RELEVANT DOCKET ENTRIES

DATE	NR	PROCEEDINGS
12/7/84	1	COMPLAINT TO AVOID POST-PETITION TRANSFERS OF PROPERTY OF THE ESTATE FILED. 3 JA
12/11/84	2	Summons and notice of pre-trial issued. January 16, 1985 @ 1:30 p.m. ja
12/12/84	3	Certification of service filed. ja
1/16/85	4	Answer of Robert E. Martin, Lake County Treasurer, filed with proof of service. mp 4
1/16/85	5	Complaint to avoid post-petition transfers of property of the estate—Partly held and Adj. to 2-13-85 @ 1:30 p.m. Minutes filed. ja
1/16/85	6	Answer of Federal Defendant, Dept. of Treasury, Internal Revenue Service, by its attorney, Patrick M. McLaughlin filed. 15 ja

DATE	NR	PROCEEDINGS
1/21/85	7	Answer and cross-claim of defendant, State of Ohio, Dept. of Taxation filed. ja
1/21/85	8	Stipulation between the trustee and the defendant, John Howard, extending time for the defendant to answer complaint for the period of 20 days filed. ja
1/23/85	9	Order entered that the stipulation between the trustee and the defendant, John Howard, is approved and that the time of the defendant, John Howard, to answer complaint is extended for 20 days from the date hereof. (Noted: 1-25-85) ja
1/25/85	10	Letter from David O. Simon advising that the continued pre-trial has been scheduled for 2-13-85 @ 1:30 p.m., filed. ja
2/13/85	11	Complaint to avoid post-petition transfers of property of the estate—Adj. to 2/27/85 @ 3:00 p.m. Minutes filed. ja
2/13/85	12	Letter from David O. Simon advising that the continued pre-trial has been scheduled for 2-27-85 @ 3:00 p.m., filed. ja
2/15/85	13	Answer to cross claim of defendant, John Howard filed. ja
2/15/85	14	Answer of defendant, John Howard to complaint to avoid post-petition transfers of property of the estate filed. ja
2/26/85	15	Notice of withdrawal of trial attorney James C. DeBoard with approval of Judge Alice M. Batchelder filed. ja
2/27/85	16	Complaint to avoid post-petition transfers of property of the estate—Adj. to April 22, 1985 @ 9:30 a.m. Minutes filed. ja

DATE	NR	PROCEEDINGS
2/27/85	17	Notice that the complaint to avoid post-petition transfers of property of the estate will come on for trial on April 22, 1985 @ 9:30 a.m. filed. ja
3/13/85	18	Motion of David O. Simon, Trustee for judgment on pleadings against the State of Ohio, Dept. of Taxation with memorandum in support and certificate of service filed. ja
3/15/85	19	Stipulations of the parties, David O. Simon, Trustee, plaintiff; and Department of the Treasury, IRS, defendant filed. 18 ja
3/19/85	20	Stipulations of the parties, David O. Simon, Trustee, Plaintiff, and Robert E. Martin, Lake County Treasury, defendant filed. 6 ja
3/27/85	21	Trustee's brief in support of avoidance of post-petition transfers of property of the estate. 8 ja
3/27/85	22	Brief of Robert E. Martin, Lake County Treasurer relative to plaintiff's complaint filed. 7 ja
3/27/85	23	Brief of the United States of America relative to plaintiff's complaint filed. 14 ja
4/03/85	24	Memorandum of Decision and Order completed by Alice M. Batchelder, U.S. Bankruptcy Judge, filed. RU 9
4/3/85	25	Judgment Order entered in favor of the Trustee and against the defendant, the Internal Revenue Service, in the sum of $20,000.00 and against the defendant Lake County Treasurer, in the sum of $10,070.32. 10 (Noted 4/3/85) RU
4/12/85	26	Notice of Appeal To District Court on the Order dated 4/3/85 in which the United States of America was ordered to turnover $20,000.00 to the Estate of debtor over the objection of the United States, filed. RU 11

DATE	NR	PROCEEDINGS
4/17/85	27	Notice of Adjourned Hearing on the Complaint to Avoid Post-Petition Transfers of Property of the Estate has been adjourned from April 22, 1985 to *May 31, 1985 at 9:00 A.M.* in Courtroom 420, filed.
4/16/85	28	Answer of Defendant, Huntington National Bank of Northeast Ohio to Complaint For An Accounting and Avoidance of Post-Petition Transfers of Property of the Estate with Certificate of Service, filed. RU
4/22/85	29	Notice of Appeal to the District Court of Robert Martin, Lake County Treasurer with names and addresses of interested parties, filed. RU 12
4/19/85	30	Appellant United States of America's Designation of the Contents for Inclusion In The Record on Appeal and Statement of the Issues Intended to be Presented on Appeal From the Order Dated 4/03/85, filed. RU 19
4/30/85	31	Appellant, Robert E. Martin, Lake County Treasurer's Designation of the Contents For Inclusion In the Record on Appeal and Statement Of the Issues Intended to be Presented on Appeal from the Order dated April 3, 1985, filed. 13 RU
5/20/85	32	Notice of appeal submitted to USDC, assigned to Judge Battisti and given case No. C 85-1483
5/31/85		Hearing on Complaint to Avoid Post-Petition Transfer of Property of the Estate—Judgment for Plaintiff—OSJ 6-13-85. RU
6/13/85	33	Judgment entered By Default Against John Howard with Certificate of Service by clerk's office. (Noted 6/20/85) RU

DATE	NR	PROCEEDINGS
6/13/85	34	Supplemental Judgment entered on Pleadings Against The State of Ohio, Department of Taxation with Certification of Service by Clerk's office. (Noted 6/20/85) RU
2/26/86	35	Order and Judgment entry entered that the appellant's appeal from the Bankruptcy Court is denied and the judgment of the Bankruptcy Court as reflected in its memorandum of decision is hereby affirmed.
4/6/88		BC-6 completed and adversary proceeding closed.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

No. C 85-1483

IN RE: NORDIC VILLAGE, INC.,
dba SWISS HAUS, DEBTOR

RELEVANT DOCKET ENTRIES

DATE	NR	PROCEEDINGS
5/20/85	1	ORIGINAL Pleadings & certified copy of docket entries in case no. B84-771, adv. B84-694 rec'd. from Clerk of U.S. Bankruptcy Ct. for the N.D. of Oh., E. Div. and filed.
6/5/85	2	STIPULATION & ORDER Granting Appellants an extension of time until 7/5/85 to the their briefs and granting appellee leave of 15 da. from date of service of said brief to file his brief, filed. Battisti, J.* Copies issued. (noted 6/5/85). *[by JW., D. Clk].
7/2/85	3	BRIEF of Appellant, USA, filed. Copies mailed 7/1/85.
7/5/85	4	MOTION of Appellee, Simon, Trustee, for extension of time of 15 da. following the filing of The Lake Co. Treasurer's brief, with memorandum in support, filed. Copies mailed 7/5/85.
7/5/85	5	BRIEF of Appellant, Robert E. Martin, Lake Co., Trea., filed. Copies mailed 7/5/85.
7/12/85	6	LETTER from Asst. Prosecutor Krantz dtd 7/10/85 correcting grammatical errors in the Lake Co. Treasurer's Brief, filed. Copies mailed 7/10/85.

DATE	NR	PROCEEDINGS
7/22/85	7	BRIEF of Appellee, David O. Simon, Trustee, filed. Copies mailed 7/19/85.
10/2/85		CASE Reassigned to Judge Lambros purs. to Administrative Order.
2/26/86	8	ORDER that the appeal is denied and the judgment of the Bankruptcy Judge is affirmed; this action is terminated, filed. Lambros, J. c/m 2/26/86 (2/27/86)
2/26/86	9	JUDGMENT entered that the appellants' appeal from the Bankruptcy Court is denied and the judgment of the Bankruptcy Court is affirmed, filed. Lambros, J. c/m 2/26/86 (2/27/86)
3/12/86	10	MOTION of appellant to amend or alter judgment of 2/25/86. Memorandum in support, filed. c/m 3/12 (20 p)
5/18/89	11	POST JUDGMENT ORDER denying mot cf appellant to amd or alter judg of 2/26/86. Lambros, J. issd 5/18/89 (4p) EOD 5/22/89 sp
7/17/89	12	NOTICE of appeal by pltf re: 2/25/86 & 5/18/89. c/m Edwards, Kopp, Greene, Simon & USCA. (1p) (EOD 7/17/89) cas

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 89-3656

IN RE: NORDIC VILLAGE, INC.,
dba SWISS HAUS, DEBTOR

INTERNAL REVENUE SERVICE, PLAINTIFF-APPELLANT
ROBERT E. MARTIN, LAKE CO. TREASURER, PLAINTIFF

v.

NORDIC VILLAGE, INC.; DAVID O. SIMON, TRUSTEE,
DEFENDANTS-APPELLEES

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
7/24/89	Bankruptcy Case Docketed. Notice filed by Appellant IRS. Transcript needed: n (ns)
7/24/89	BRIEFING LETTER SENT setting briefing schedule: appellant brief due 9/5/89; appellee brief due 10/10/89; appendix due 11/3/89 [89-3656] (ns)
7/28/89	TRANSCRIPT ORDER FORM filed by Charles M. Greene for Appellant IRS: Transcript not needed. [89-3656] [149638-1] (cob)
7/31/89	APPEARANCE filed by Attorney William J. Kopp for Appellant IRS [89-3656] (vf)
8/3/89	APPEARANCE filed by Attorney Gary R. Allen for Appellant IRS [89-3656] Mr. Allen is lead counsel. (vf)

DATE	PROCEEDINGS
8/3/89	APPEARANCE filed by Attorney Murray S. Horwitz for Appellant IRS [89-3656] (vf)
8/3/89	PRE-ARGUMENT STATEMENT filed by Gary R. Allen for Appellant IRS [89-3656] (vf)
8/7/89	APPEARANCE filed by Attorney Michael D. Zaverton for Appellee David O. Simon. [89-3656] (bb)
8/30/89	Appellant MOTION filed to extend time to file brief. Motion filed by Gary R. Allen for Appellant IRS. Certificate of service date 8/29/89. [89-3656] (mdm)
8/31/89	RULING granting motion to extend briefing [155723-1] filed by Gary R. Allen [89-3656]. (mdm)
8/31/89	BRIEFING LETTER SENT resetting briefing schedule: appellant brief due now 9/19/89; appellee brief now due 10/19/89; appendix now due 11/9/89 [89-3656] (mdm)
9/19/89	BRIEF filed by Gary D. Gray for Appellant IRS. Copies: 10. Certificate of service date 9/18/89 [89-3656] (jws)
8/19/89	APPEARANCE filed by Attorney Gary Gray for Appellant IRS [89-3656] (vf)
9/21/89	FRAP Rule 11 Certificate from the District Court filed. [89-3656] 1 plea; (ns)
10/18/89	Appellee MOTION filed to extend time to file brief. Motion filed by Michael D. Zaverton for Appellee David O. Simon. Certificate of service date 10/17/89. [89-3656] (mmd)
10/19/89	RULING granting motion to extend briefing [175756-1] filed by Michael D. Zaverton [89-3656]. (mmd)
10/19/89	BRIEFING LETTER SENT resetting briefing schedule: appellee brief now due 11/2/89; appendix now due 11/23/89 [89-3656] (mmd)

DATE	PROCEEDINGS
11/2/89	BRIEF filed by Michael D. Zaverton for Appellee David O. Simon. Copies: 10. Certificate of service date 11/1/89 [89-3656] (jws)
11/13/89	Appellant MOTION filed to extend time to file reply brief. Motion filed by Gary R. Allen for Appellant IRS. Certificate of service date 11/9/89. [89-3656] (mmd)
11/15/89	RULING granting motion to extend time to file reply brief [186909-1] filed by Gary R. Allen [89-3656]. (mmd)
11/15/89	BRIEFING LETTER SENT resetting briefing schedule: reply brief now due 11/30/89; appendix now due 12/7/89 [89-3656] (mmd)
11/30/89	REPLY BRIEF filed by Gary R. Allen for Appellant IRS Copies: 10. Certificate of service date 11/29/89 [89-3656] (jws)
12/4/89	APPENDIX filed by Murray S. Horwitz for Appellant IRS. Copies: 5. Certificate of service date 12/1/89 [89-3656] (jws)
2/20/90	Oral argument date set for AM 5/3/90 in court room 403. Notice of argument sent to counsel. [89-3656] (paw)
5/3/90	CAUSE ARGUED by Gary D. Gray for Appellant IRS, Michael D. Zaverton for Appellee David O. Simon before Judges Kennedy, Wellford, Joiner. [89-3656] (paw)
10/4/90	OPINION filed: AFFIRMED [89-3656], decision for publication pursuant to local rule 24 [89-3656]. Cornelia G. Kennedy, dissenting, Harry W. Wellford, Circuit Judge, Charles W. Joiner, Authoring Judge. (tmb)
10/4/90	JUDGMENT: AFFIRMED [89-3656]. (tmb)

DATE	PROCEEDINGS
10/15/90	Appellant MOTION filed to extend time to file petition for rehearing en banc 11/17/89 . . Motion filed by Gary R. Allen for Appellant IRS. Certificate of service date 10/12/90. [89-3656] (mmd)
10/15/90	RULING granting motion to extend time to file petition for rehearing en banc [327391-1] filed by Gary R. Allen. Petition to be filed by 11/17/90 for IRS [89-3656] (LG/ bb per hearing panel, 10/15/90 by phone; counsel notified by mail) (bb)
10/15/90	APPEARANCE filed by Attorney John A. Dudeck for Appellant IRS [89-3656] (vf)
11/19/90	PETITION for en banc rehearing filed by Gary R. Allen for Appellant IRS. Certificate of service date 11/16/90. [89-3656] (mmd)
12/19/90	LETTER SENT by lg to notifying that party has an opportunity to respond to a petition for en banc rehearing [344163-1]; previously filed by Gary R. Allen. Response due by 1/2/91 for David O. Simon, for Michael D. Zaverton [89-3656] (10 page limit, 20 copies; no extensions). (bb)
12/27/90	RESPONSE to a petition for en banc rehearing [344163-]1; previously filed by Gary R. Allen. Response filed by M Sicherman for D. Simon, appellee. Certificate of service date 12/27/90. [89-3656] (bb)
12/27/90	APPEARANCE filed by Attorney Marvin A. Sicherman for Appellee David O. Simon [89-3656] (vf)
12/28/90	CERTIFIED RECORD filed. Volumes include 1 Pl. [89-3656] (ns)
1/23/91	ORDER filed denying petition for en banc rehearing [344163-1] filed by Gary R. Allen [89-3656]. Cornelia G. Kennedy, Circuit Judge, Harry W. Wellford, Senior Judge, Charles W. Joiner, District Judge. (tmb)

DATE	PROCEEDINGS
1/31/91	MANDATE ISSUED with no cost taxed [89-3656] (vf)
1/31/91	CERTIFIED RECORD filed to lower court at the end of appellate proceedings. Volumes include 1 Pl. [89-3656] (vf)
1/31/91	CERTIFIED RECORD RETURNED to lower court at the end of appellate proceedings. [89-3656]. Volumes included: 1 Pl. (vf)

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO

Case No. B84-771-B

Bankruptcy Judge: ALICE M. BATCHELDER

Adversary No. B84-694

IN RE: NORDIC VILLAGE, INC., dba SWISS HAUS, DEBTOR

DAVID O. SIMON, TRUSTEE
1300 Ohio Savings Plaza
Cleveland, Ohio 44114
PLAINTIFF

vs

JOHN HOWARD
3040 Riverside Drive, Suite 122
Columbus, Ohio 43221

STATE OF OHIO, DEPARTMENT OF
TAXATION (SALES TAX)
30 East Broad Street, 22nd Floor
Columbus, Ohio 43215

TREASURER OF LAKE COUNTY
105 Main Street
Painesville, Ohio 44077

DEPARTMENT OF THE TREASURY
Internal Revenue Service
P.O. Box 99183
Cleveland, Ohio 44199
Attention: Special Procedures

Also Notify:

UNITED STATES ATTORNEY GENERAL
Star Building
Washington, D.C.

UNITED STATES ATTORNEY
NORTHERN DISTRICT OF OHIO
1404 East Ninth Street, Suite 500
Cleveland, Ohio 44114
DEFENDANTS

COMPLAINT TO AVOID POST-PETITION TRANSFERS OF PROPERTY OF THE ESTATE

[Filed Dec. 7, 1984]

David O. Simon, Trustee, respectfully represents to the Court as follows:

1. Jurisdiction of the within proceedings is vested in this Court by virtue of the provisions of 28 U.S.C. § 157 as enacted and effective on July 10, 1984 as part of the Bankruptcy Amendments and Federal Judgeship Act of 1984, Local General Order No. 84, entered on July 16, 1984, by the United States District Court for the Northern District of Ohio, 28 U.S.C. § 1334, and such vestiges of the provisions of 28 U.S.C. §§ 1471 and 1473 that have not in fact been repealed by the passage of the Bankruptcy Amendments Act of 1984 in that the matters hereinafter alleged as the Complaint of Plaintiff are core proceedings relating among other things to recovery of post-petition transfers of property of the estate pursuant to 11 U.S.C. § 549.

2. Plaintiff is the duly-appointed Trustee in the within Chapter 11 Proceedings which were commenced by the filing of a Voluntary Petition for Relief under Chapter 11 of the Bankruptcy Code on March 27, 1984.

3. On various dates subsequent to the commencement of the within proceedings, the Debtor transferred to the Defendants various sums of money, all as is more fully set forth in Exhibit "A" attached hereto, which transfers were transfers of property of the estate post-petition, in payment of pre-petition obligations owed by the Debtor to the Defendants.

4. That the transfers aforementioned were not authorized by any provision under Title 11 of the United States Code, or by the Court, and are avoidable by the Trustee pursuant to § 549(a) of the Bankruptcy Code.

5. That in addition, the property so transferred is property of the estate pursuant to § 541 of the Bankruptcy Code and subject to turnover pursuant to § 542 of the Bankruptcy Code.

WHEREFORE, your Trustee prays judgment in his favor that the transfers hereinbefore referred to, and more fully set forth in Exhibit "A" attached hereto, be avoided pursuant to § 549 of the Bankruptcy Code, and the Defendants be directed to turnover such property to the estate pursuant to § 542 of the Bankruptcy Code, and for such other and further relief as is just and equitable in the premises.

/s/ David O. Simon
DAVID O. SIMON
DETTELBACH &
SICHERMAN CO., L.P.A.
Attorneys for Trustee
1300 Ohio Savings Plaza
Cleveland, Ohio 44114
Phone: (216) 696-6000

EXHIBIT "A"

Check Date	Payee	Amount
7/9/84	John Howard	$5,000.00
7/9/84	State of Ohio	$4,401.25
7/8/84	Lake County Treasurer	$10,070.32
7/18/84	Internal Revenue Service	$20,000.00

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Case No. B84-771-B

Adversary No. B84-694

JUDGE ALICE BATCHELDER

IN RE: NORDIC VILLAGE, INC., dba SWISS HAUS, DEBTOR

DAVID O. SIMON, TRUSTEE, PLAINTIFF

-v-

JOHN HOWARD, ET AL., DEFENDANTS

ANSWER

[Filed: 1-16-85]

The federal defendant, Department of Treasury, Internal Revenue Service, by its attorney, Patrick M. McLaughlin, United States Attorney for the Northern District of Ohio, responds to plaintiff's Complaint to Avoid Post-Petition Transfers of Property of the Estate as follows:

First Defense

The Complaint fails to state a claim upon which relief can be granted as to the defendant, Department of Treasury, Internal Revenue Service, since it is not a suable entity.

Second Defense

The defendant further states that it presently lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the Complaint.

WHEREFORE, the defendant, Department of Treasury, Internal Revenue Service, prays that this Court enter judgment dismissing plaintiff's complaint, and for such other and further relief as the Court deems appropriate.

PATRICK M. MCLAUGHLIN
United States Attorney

WILLIAM KOPP
Assistant United States
Attorney

/s/ Robin Greenhouse
ROBIN GREENHOUSE
Trial Attorney, Tax Division
U.S. Department of Justice
Washington, D.C. 20530
Telephone: (202) 724-6010

SUPREME COURT OF THE UNITED STATES

No. 90-1629

UNITED STATES, PETITIONER

v.

NORDIC VILLAGE, INC., DAVID O. SIMON, TRUSTEE

ORDER ALLOWING CERTIORARI

Filed June 17, 1991

The petition herein for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit is granted.

June 17, 1991

☆ U. S. GOVERNMENT PRINTING OFFICE, 1991 262203 40019